

Copies mailed / handed / faxed to counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

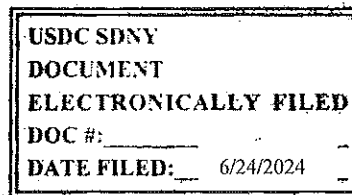
Richard Wahlers,

Petitioner,

-against-

New York State Board of Parole,

Respondent.



23-cv-3567-CS-VR

ORDER

VICTORIA REZNIK, United States Magistrate Judge:

Petitioner Richard Wahlers, pro se, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1). Respondent New York State Board of Parole opposes Wahlers' petition. (ECF Nos. 26, 27).

On May 20, 2024, the Court ordered the parties to submit letters, identifying "the dates when Wahlers' period of probation began and when it is set to expire." (ECF No. 30). On June 18, 2024, the Board of Parole explained that Wahlers' "term of probation expired on September 5, 2023." (ECF No. 31 at 1). The Board of Parole also explained that Wahlers was designated a Level 1 Sex Offender and is therefore subject to ongoing requirements of New York's Sex Offender Registration Act (SORA), N.Y. Correct. Law § 168 et seq. (*Id.* at 1–3).

Wahlers does not dispute that his term of probation ended on September 6, 2023. (ECF No. 32 at 2). But he writes, "I am in Custody under the Sex Offender Registration Requirements," which will continue "for a period of 20 Years from Sentencing." (*Id.* at 3). He then outlines a series of restrictions that he is subject to under SORA. (*Id.*).

In light of these filings, the Court requires the parties' respective positions on whether Wahlers' petition should be dismissed either as moot or for lack of subject matter jurisdiction because he is no longer "in custody" under Section 2254. *See Janakievski v. Exec. Dir.*, 955 F.3d 314, 319 (2d Cir. 2020); *White v. LaClair*, No. 19-cv-1283, 2021 WL 200857, at *3–9 (E.D.N.Y. Jan. 19, 2021) (holding that New York's SORA requirements were insufficient to render a § 2254 petitioner "in custody"); *Rodriguez v. Att'y Gen.*, No. 10-cv-3868, 2011 WL 519591, at *1, 4–9 (S.D.N.Y. Feb. 15, 2011) (recommending dismissal of a § 2254 petition "because SORA's requirements constitute collateral consequences of his conviction and are insufficient to render [a petitioner] 'in custody' for federal habeas corpus purposes"), *report and recommendation adopted*, 2011 WL 3875328, at *2–5 (S.D.N.Y. Sept. 2, 2011).


The Board of Parole is hereby **ORDERED** to submit a letter, by no later than **July 9, 2024**, setting forth its position and responding to Wahlers' letter at ECF No. 32. Wahlers is hereby **ORDERED** to submit a letter, by no later than **July 23, 2024**, setting forth his response.

WAHLERS IS INFORMED THAT FAILURE TO RESPOND TO THIS ORDER MAY RESULT IN A REPORT AND RECOMMENDATION, RECOMMENDING DISMISSAL OF THIS § 2254 PETITION AS MOOT.

Chambers will mail copies of this Order and the cited caselaw to Petitioner.

SO ORDERED.

DATED: White Plains, New York
June 24, 2024


VICTORIA REZNIR
United States Magistrate Judge